

### **REMARKS**

Upon entry of the present Amendment the claims under consideration remain Claims 1, 3 and 5. The specification has been amended to more clearly agree with the Claims presently under consideration. Applicants urge that no new matter is presented hereby. The Detailed Action of 18 February 2005 will now be addressed with reference to the headings and any paragraph numbers therein.

### **Specification**

Per paragraph 1 of the Detailed Action, the specification is objected to for failing to provide proper antecedent basis for the claimed subject matter. Applicant has hereby amended the specification to provide proper antecedent basis to the claims, thereby obviating the rejection.

### **Claim Rejections -35 USC §103**

Per paragraph 4 of the Detailed Action, Claims 1, 3 and 5 stand rejected under 35 U.S.C. §103(a), of as obvious over Banks et al. (U.S. Patent 5,300,265; hereinafter "Banks") in view of Fiorenzano, Jr., (U.S. Patent 5,326,543; hereinafter "Fiorenzano").

It is the contention of the Detailed Action that: "the Banks reference teaches that the exhaust of, for example, an internal combustion engine, which is a

Appl. No. 09/623,008

primary engine for moving cars, boats or the like can be used (abstract, lines 1-2 and col. 4, lines 62-68).”

This statement is incorrect. Banks teaches the use of internal combustion engine for supplying exhaust gases. But, Banks does not teach “using an internal combustion engine which is a primary engine for moving cars, boats or the like” to supply the gases necessary for fumigation. This teaching is supplied entirely by the Examiner without reference to a teaching in the art.

The Detailed Action further states; “the Fiorenzano reference does not specify any type of ship such that ships that utilize motive power are included. However, a boiler is an integral part of motive power.” But, Fiorenzano does not teach or suggest utilizing the exhaust gases from a ship’s boiler, i.e., the gases of the primary source of motive power for a transportation vessel, as required by Claims 1 and 5 (or primary energy source of a boiler as required by Claim 3) for fumigation.

The Detailed Action then concludes that: “ a person having ordinary skill in the art would have been motivated to utilize the teachings of the Banks reference to the Fiorenzano reference so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, Jr., col. 1, lines (16-18)).”

In the present case the *Manual of Patent Examining Procedure* § 2144.04 (VI) (C) is instructive: "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by

itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device. [emphasis added]" *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

Neither of Fiorenzano nor Banks reasonably teach or suggest taking the exhaust gases from the primary source of motive power for a transportation vessel, as required in at least Claim 1, for a method for the treatment of goods. Such motivation or suggestion can thus have only come from the Applicant's specification. Therefore, it is respectfully requested that the present rejections be withdrawn.

### ***Response to Arguments***

Per paragraph 5 of the Detailed Action, the Examiner disagrees with the Applicants' contention that Claims 1 and 5 "make clear that the primary source of motive power for the goods-holding vessel and the source of other gases is one and the same source."

At the top of page 4, the Examiner explains: "The examiner disagrees since Banks is a "primary engine". The fact that the inventors of the Banks reference do not suggest what the power or energy produced by their engine could be used for, [emphasis added] does not mean it is not a "primary" engine. Even if Banks were not a "primary" engine, when substituting the concept to the ship of the Fiorenzano

reference, his<sup>1</sup> engine is by applicant's definition is [sic] a "primary" engine because its primary purpose is to propel the ship."

Applicant first respectfully requests clarification, in a further nonfinal Office Action, if such is necessary, of how the Examiner's above discussion of a "primary engine" relates to the clarity of Applicant's Claims.

It is further instructive that, with the Examiner's above response, the Examiner admits that: 1) Banks does not teach or suggest use of gases from a primary motive force of a vessel, but that the Examiner has merely deemed Banks to be equivalent to the teachings of the present invention; and that if the deemed equivalence of 1) fails, that: 2) the Banks' fumigation method is integrated into a primary motive force engine merely by placement on the ship of Fiorenzano. Neither of these contentions is reasonably supported by any teachings from the art itself. Because neither reference reasonably suggests integrating the exhaust from a primary motive force engine with a fumigation system as taught and claimed by the present invention, the Examiner is clearly relying on the benefit of Applicant's disclosure to supply what the references do not teach or suggest themselves.

#### Examiner Interview Summary

Applicant's undersigned attorney spoke with Examiner Chorbaji by

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<sup>1</sup> "his" was identified by the Examiner as meaning "Fiorenzano's" during a teleconference with the Applicant's undersigned attorney on 20 April 2005.

Appl. No. 09/623,008

telephone on 20 April 2005. The meaning of "his engine" within the Detailed Action at page 4, line 5, was discussed and it was established that "his" referred to Fiorenzano. The Examiner further clarified that his reference to "primary engine" was intended to be equivalent to "a primary motive force." No prior art references were discussed and no agreement as to the allowability of any Claims was reached.

Request For Telephonic Interview

Clearly, there are differences between the present invention and the cited references involving patentable subject matter. These differences are believed by the Applicant to be properly defined in the present Claims. The Examiner is requested to call Applicants' attorney (per the provisions of M.P.E.P. §713 *et seq.*) to discuss any further problems or suggest solutions in defining the present invention in order to expedite the case towards allowance before issuing a final Office Action.

Favorable consideration is requested.

Respectfully submitted,



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